# SUPREME COURT OF THE UNITED STATES.

## No. 89.

ALEX. RANKIN, CUNNINGHAM SMITH, GEORGE C. C. THURGER, AND JOHN McCALL, PLAINTIFFS IN ERROR,

vs.

JESSE HOYT.

IN ERROR TO THE CIRCUIT COURT U. S. SOUTHERN DISTRICT OF N. YORK.

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J. & G. S. GIDEON, printers.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States of America, to the judges of the circuit court of the United States, for the southern district of New York, second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Alexander Rankin, Cunningham Smith, George C. C. Thurger, and John McCall, plaintiffs, and Jesse Hoyt, defendant, a manifest error hath happened, to the great damage of the said plaintiffs, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the city of Washington, in the District of Columbia, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-seventh.

J. W. METCALF,

*Clerk of the circuit court of the United States, for the southern district of New York, in the second circuit.*

The answer of the honorable Smith Thompson and Samuel R. Betts, judges of the circuit court of the United States, for the southern district of New York, in the second circuit, to the within writ, containing the citation, record, and proceedings in the within mentioned cause, as appears by the schedules hereunto annexed.

Attest: J. W. METCALF, *Clerk.*

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, to Jesse Hoyt.

Whereas Alexander Rankin, Cunningham Smith, George C. C. Rankin, and John McCall, lately issued out of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, a writ of error, directed to the judges of the circuit court

of the United States, for the southern district of New York, in the second circuit, stating that, in the record and proceedings, as also in the rendition of the judgment, of a plea in the said court before the judges thereof, between Alexander Rankin, Cunningham Smith, George C. C. Thurger, and John McCall, plaintiffs, and Jesse Hoyt, defendant, a manifest error hath happened, to the great damage of the said plaintiffs.

And whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held in the District of Columbia, at the city of Washington, on the second Monday of January next. You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

SAM. R. BETTS.

Due service of the above citation is admitted.

B. F. BUTLER, *Defendant's attorney.*

UNITED STATES OF AMERICA, *Southern district of New York, ss:*

I, James W. Metcalf, clerk of the circuit court of the United States of America, for the southern district of New York, second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, second circuit, this twenty-ninth day of December, in the year of our Lord one thousand eight hundred and forty-three, and of the independence of the United States the sixty-eighth.

[SEAL.]

J. W. METCALF, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,

*For the southern district of New York, in the second circuit.*

Pleas before the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, at the City Hall of the city of New York, of the last Monday of November, in the year of our Lord one thousand eight hundred and thirty-nine.

Witness Roger B. Taney, esquire, chief justice of the Supreme Court of the United States of America.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that on the thirteenth day of May, in the year eighteen hundred and thirty-nine, before the judges of the circuit court of the United States, for the southern district of New York, in the second circuit, in the city hall, comes Jesse Hoyt, by B. F. Butler, his attorney, and suggests to the said judges that Alexander Rankin, Cunningham Smith, George C. C. Thurger and Jno. McCall have commenced a suit against him in the superior court of the city of New York, in the State of New York, for acts done by him under the revenue laws, as collector of the district of the city of New York, and prays that the suit may be docketted in this court as commenced here, and that the clerk be ordered to issue the proper process to remove the said suit, and all the proceedings therein, unto this court.

Whereupon the said judges sent unto the justices of the said superior court their writ done in these words:

The President of the United States to the superior court of the city of New York, greeting:

We, for certain reasons, being desirous that our circuit court of the United States, for the southern district of New York, in the the second circuit, should be certified of a certain cause commenced before you against Jesse Hoyt, defendant, at the suit of Alex. Rankin, Cunningham Smith, George C. C. Thurgar, and Jno. McCall, plaintiffs, do therefore command you, that the record and [L. S.] proceedings in the said cause you distinctly and openly send to the said circuit court of the United States, for the southern district of New York, in the second circuit, at the city of New York, on the last Monday of November next, as fully and amply as the same are remaining before you, by whatsoever names the said parties may be called therein, together with this writ, that our court may cause to be further done, and thereupon what of right ought to be done. Witness Roger B. Taney, esquire, chief justice of the United States, at the city of N. Y., the first day of August, one thousand eight hundred and thirty-nine.

FRED. J. BETTS, *Clerk.*

B. F. BUTLER, *Defts. Atty.*

To which the following return was made:

The answers of the justices of the superior court of the city of New York to the within writ.

The record and proceedings whereof mention is within made, and all things touching the same, are hereby respectfully certified to the justices of the circuit court of the United States, for the southern district of New York within mentioned, as within it is commanded.

Witness Samuel Jones, esq., ch. justice of the superior court of the city of New York, at the city hall of the city of New York, the first day of November.

CHAS. A. CLINTON, *Clk.*

Superior court of the thirteenth day of May, in the year one thousand eight hundred and thirty-nine.

CITY AND COUNTY OF NEW YORK, *ss:*

Alexander Rankin, Cunningham Smith, George C. C. Thurger, and John McCall, plaintiffs, in this suit, by Francis R. Tillon, their attorney, come into this court, and by filing this their declaration, pursuant to the statute, and by such other proceedings as are by law in such case required, commenced this their action against Jessee Hoyt, a resident within the city and county of New York, defendant in this suit, in a plea of trespass in the case upon promises; and hereupon the said plaintiffs complain against the said defendant, for that, whereas the said plaintiffs, at the several days and times hereinafter mentioned, were persons transacting business as co-partners under the name, firm, and style of Smith, Thurgar & Co., to wit, of the said city of New York; and also, for that, whereas the said defendant, on the twenty seventh day of April, one thousand eight hundred and thirty-nine, at the said city of New York, was indebted to the said plaintiffs in the sum of five thousand five hundred dollars, lawful money of the United States of America, for money before that time lent and advanced by the said plaintiffs to the said defendant, and at the special instance and request of the said defendant; and for other moneys by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant; and for other money by the said defendant before that time had and received to and for the use of the said plaintiff; and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs, well and truly to pay unto the said plaintiff the said sum of money in this count mentioned, when the said defendant should be thereunto afterwards requested; and whereas, also, the said defendant, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant, then and there, was found to be in arrear, and indebted to the said plaintiff in the further sum of five thousand five hundred dollars of like lawful money aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faith-

fully promised the said plaintiffs, well and truly to pay unto the said plaintiffs the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant (although often requested, &c.) hath not yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same, or any part thereof, to the said plaintiffs, the said defendant hath hitherto wholly refused, and still doth refuse, to the damage of the said plaintiffs of five thousand five hundred dollars, and thereof the said plaintiffs bring suit, &c.

And the said Jesse Hoyt, defendant in this suit, by B. F. Butler, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in *matter* and form as the said plaintiffs in this suit have thereof declared against the said defendants, and of this he puts himself upon the country; and the said plaintiffs likewise, &c.

Therefore, to try the issue above joined, let a jury thereupon come before the judges of the said circuit court, of the City Hall, of the said city, on the first Monday of April, one thousand eight hundred and forty, twelve, &c., each of whom, &c., and who neither, &c., because as well, &c., the same day is given to the parties aforesaid, there, &c.

And hereupon the process thereof is continued between the parties aforesaid, in this same court, before the judges thereof, until the last Monday of November, in the year of our Lord one thousand eight hundred and forty-two, at the City Hall, of the city of New York, and the same day is given to the parties aforesaid at the same place. At which said last mentioned day, before the judges aforesaid, at the place aforesaid, come the parties aforesaid, by their respective attorneys aforesaid, and hereupon the issue above joined is ordered by the said circuit court of the United States to be tried at the circuit court, appointed to be held at the city of New York, in and for the southern district of New York, in the second circuit, on the last Monday of November instant.

Which said issue, in form aforesaid joined between the said parties, came on to be tried on the twenty-ninth day of November, in the year one thousand eight hundred and forty-two, in the said the circuit court of the United States, for the southern district of New York, in the second circuit, at the City Hall, in the city of New York, before the honorable Smith Thompson, one of the judges of the said court, by a jury of the body of the said southern district of New York, all good and lawful men of the said southern district.

At which day came there, as well the said plaintiffs, by their said attorney, as the said defendant, by his said attorney; and the jurors, of the jury aforesaid, being summoned, also came, and to speak the truth of the said issue, and true verdict to give upon the same, were then and there chosen, tried, and sworn.

And the jurors aforesaid, upon their oath, find that the plaintiffs, at the several times hereinafter mentioned, were merchants and copartners in business in the city of New York, under the firm of Smith, Thurgar & Co. And they further find, that at and during all the said time, the defendant was collector of the customs of the port of New York.

And the jurors aforesaid, upon their oath aforesaid, do further find, that on the first day of May, in the year 1838, the plaintiffs imported into the port of New York, in the ship Josephine, from Buenos Ayres, an invoice of twenty-one bales of unmanufactured wool, and that on the sixth day of May aforesaid, the plaintiffs made an entry of the said wool in the office of the collector of the customs of the port of New York, and that at the time of making such entry the plaintiffs produced to the collector aforesaid the original invoice of the said wool.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said invoice is dated at Buenos Ayres aforesaid on the sixth day of April, in the year last aforesaid, at which time the said wool was exported from Buenos Ayres aforesaid for New York; and that the said wool, at Buenos Ayres, is stated in the said invoice to be of the value of seven and one-half cents per pound.

And the jurors aforesaid, upon their oaths aforesaid, find further, that in the month of April, in the year last aforesaid, the plaintiffs imported from Buenos Ayres aforesaid, into the port of New York, twenty-five other bales of unmanufactured wool, and that an entry was, on the first day of May, in the year last aforesaid, made by the plaintiffs of the said last mentioned wool in the office of the collector aforesaid, of the port of New York; and that at the time of making the said entry the plaintiffs produced to the collector aforesaid the original invoice of the said last mentioned wool.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said invoice is dated at Buenos Ayres, on the tenth day of March, in the year last aforesaid, at which time the said last mentioned wool was exported from Buenos Ayres for New York aforesaid, and that the said last mentioned wool is stated in the said last mentioned invoice to be of the value of seven and one-half cents per pound.

And the jurors aforesaid, upon their oath aforesaid, further find, that in the month of November, in the year last aforesaid, the plaintiffs imported from Montevideo, into the port of New York aforesaid, nineteen other bales of unmanufactured wool, and that an entry thereof was, on the twenty-ninth day of November aforesaid, made by the plaintiffs in the office of the collector aforesaid; and that at the time of making the last mentioned entry the plaintiffs produced to the collector the original invoice of the last mentioned wool.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said last mentioned invoice is dated the twenty-fifth day of

August, in the year last aforesaid, at which time the said last mentioned wool was exported from Montevideo for New York; and that the said last mentioned wool is stated, in the said last mentioned invoice, to be of the value of seven and one-half cents per pound.

And the jurors aforesaid, upon their oaths aforesaid, further find, that upon the importation of the said three several invoices of wool as aforesaid, and upon the several entries thereof, the said wool was examined and appraised by the appraisers of the United States, for the collection district of New York, and that the said appraisers did, upon such examination, appraise the said wool, and each and every part and parcel thereof, as of the value of, at the places of exportation thereof, *of* nine cents per pound; which appraisements were, by said appraisers, reported to the collector, and from which said appraisements, or either of them, an appeal was made by the said plaintiffs.

And the jurors aforesaid, upon their oath aforesaid, further say, that the said appraisers found the said several parcels of wool to be unmixed and of the same quality.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said collector claimed and insisted that the said wool was subject to the payment of duties to the United States according to the valuation of the appraisers, so reported to him, and refused to deliver the said wool to the plaintiffs except upon payment by them of the duties claimed by the defendant to be due thereon as aforesaid.

And the jurors aforesaid, upon their oath aforesaid, further find, that on the eleventh day of July, in the year last aforesaid, the plaintiffs paid to the defendant the sum of \$750 $\frac{78}{100}$, being the amount demanded by the defendant, and insisted upon by him, as being due for duties to the United States on the said twenty-one bales of wool, imported by the plaintiffs in the ship Josephine, from Buenos Ayres as aforesaid.

And the jurors aforesaid, upon their oath as aforesaid, further find, that the said plaintiffs, upon the entry thereof, insisted that the said last mentioned wool was *far* from, and not subject to the payment of any duties to the United States; and that the said plaintiffs did then and there protest against the right of the defendant to require payment of any duties thereon.

And the jurors aforesaid, upon their oath aforesaid, further find, that the plaintiffs paid to the defendant, under the said protest, the said sum of money demanded by the defendant as aforesaid, and did then, to wit, at the time of such payment, give notice to the defendant, that they would bring an action against him to recover back the amount so demanded, and insisted upon by the defendant, and paid by the plaintiffs as aforesaid.

And the jurors aforesaid, upon their oath aforesaid, further find, that on the eleventh day of July, in the year last aforesaid, the plaintiffs paid to the defendant the sum of \$952 $\frac{50}{100}$, being the amount demanded by the defendant, and insisted upon by him, as

being then and there due and payable to the United States, as and for duties upon the aforesaid twenty-five bales of wool, imported in the ship Sarah Sheafe from Buenos Ayres.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said plaintiffs, at the time of the entry of the last mentioned wool, claimed [and] insisted, to and before the said defendant, that the said last mentioned wool was free from, and not subject to, the payment of any duties to the United States; and that the plaintiffs did then and there protest against the right of the defendant to require payment of any duties upon the said last mentioned wool, and that thereupon, they paid to the defendant, under the said protest last aforesaid, the said sum of money demanded by the defendant as last aforesaid, and did then and there, to wit, at the time of such payment, give notice to the defendant, that they would bring an action against him to recover back the amount so demanded and insisted upon by the defendant as last aforesaid, and so paid by the plaintiffs as last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, further find, that on the nineteenth day of January, in the year one thousand eight hundred and thirty-nine, the plaintiffs paid to the defendant the sum of one hundred and ninety-six dollars and sixty-one cents; and they further find, that the last mentioned sum was the amount demanded by the defendant, and insisted upon by him, as being then and there due and payable to the United States, as and for duties upon the aforesaid nineteen bales of wool, imported by the plaintiffs in the ship Renown from Montevideo, as hereinafter stated and set forth.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said plaintiffs, at the time of the entry of the last mentioned wool, claimed and insisted to and before the said defendant, that the said last mentioned wool was *far* from and not subject to the payment of any duties to the United States. And they further find that the said plaintiffs did then and there protest against the right of the defendant to require payment of any duties upon the said last mentioned wool, and that thereupon they paid to the defendant, under protest as last aforesaid, the said sum of money so demanded by the defendants as last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, further find, that the plaintiffs did then and there, to wit, at the time of the last mentioned payment, give notice to the defendant that they would bring an action against him to recover back the amount demanded by the defendant and paid to him by the plaintiffs as last aforesaid.

And the jurors aforesaid, upon their oath aforesaid, further find, that the said three several sums, so paid by the plaintiffs to the defendants as aforesaid, amount together to the sum of $1,909 93, and that the interest thereon, from the time of the payment thereof until this day, to wit, the 29th day of November, 1842, amounts to the

sum of $577 22, and that the aggregate of the said principal moneys and interest is the sum of $2,487 15.

And the jurors aforesaid, upon their oath aforesaid, further find, that the duties charged by the defendant upon the three several invoices of wool hereinbefore mentioned, were calculated and charged by the defendant upon the value of the said wool, as appraised by the said appraisers.

And the jurors aforesaid, upon their oath aforesaid, further find, that the wool mentioned in the said three several invoices, and each and every part and parcel thereof at the place of the exportation thereof as aforesaid, was of the value of seven and one half cents per pound, and no more.

But whether or not, upon the whole matter aforesaid, by the jurors aforesaid in form aforesaid found, the said defendant did undertake and promise in manner and form as is within complained against him, the jurors aforesaid are altogether ignorant, and thereupon pray the advice of the circuit court of the United States for the southern district of New York, before the aforesaid judges thereof; and if, upon the whole matters aforesaid, it shall seem to the said court that the said defendant did undertake and promise in manner and form as the plaintiffs have within complained against him, then the jurors aforesaid, upon their oath aforesaid, say, that the said defendant did undertake and promise in manner and form as the said plaintiffs have within thereof complained against him; and in that case they assess the damages of the said plaintiffs, by reason of the matters aforesaid, besides their costs and charges by them about their suit in that behalf expended, to two thousand four hundred and eighty-seven dollars and fifteen cents, and for those costs and charges to six cents. But if upon the whole matter aforesaid it shall seem to the said court that the defendant did not undertake and promise in manner and form as the said plaintiffs have within hereof complained against him, then the jurors aforesaid, upon their oath aforesaid, say, that the said defendant did not undertake and promise in manner and form as the said plaintiffs have within thereof complained against him.

And because the said court now here are not yet advised what judgment to give of and upon the premises, day is given to the parties aforesaid, before the judges of the said court, until the twelfth day of December, in the year one thousand eight hundred and forty-two, at the city hall of the city of New York, to hear the judgment of the said court thereupon. At which day, before the honorable Smith Thompson and Samuel R. Betts, judges of the said circuit court, at the city hall in the city of New York, came the parties aforesaid, by their attornies aforesaid, and hereupon all and singular the premises in the verdict of the said jury being fully understood, and due deliberation being thereupon had, for that it appears to the said court here that the said defendant did not undertake and promise as the said plaintiffs above thereof have complained against him.

Therefore, it is considered, that the said plaintiffs take nothing by the said declaration, but that they be in mercy, &c., and that the said defendant do go thereof without day, &c., and it is further considered by the said court here that the said defendant do recover against the said plaintiffs forty-one dollars and forty-four cents, for his costs and charges by him about his defence in this behalf laid out and expended, by the said court now here adjudged to the said defendant, and with his assent; and that the said defendant have execution thereof, &c.

Judgment signed this twenty-third day of December, A. D. 1843.

J. W. METCALF, *Cl'k.*

SUPREME COURT OF THE UNITED STATES.

ALEXANDER RANKEN, CUNNINGHAM SMITH, GEORGE C. C. THURGAR, and JOHN MCCALL,
vs.
JESSE HOYT.

Docket on writ of error from this court to the circuit court of the United States, for the southern district of New York.

Judgment given by the circuit court on December 12, 1842.

F. R. TILLON, *Att'y for pltf's.*
B. F. BUTLER, *Att'y for d'ft.*

Filed January 4, 1844.